

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY NORMAN MACINTOSH,

Defendant-Appellant.

UNPUBLISHED

June 13, 2006

No. 260187

Oakland Circuit Court

LC No. 03-192439-FC

Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from his jury trial conviction of first-degree premeditated murder, MCL 750.316. Defendant was sentenced, as a third habitual offender, MCL 769.11, to mandatory life in prison without parole for his conviction. We affirm.

I. Suppression Motion

Defendant first argues that the trial court erred in concluding at the *Walker*¹ hearing both that his statements to police were voluntary, and that his statements were admissible at trial. We disagree.

The trial court's ultimate decision on a motion to suppress is reviewed de novo on appeal. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). This Court will not disturb a trial court's factual findings with respect to a *Walker* hearing unless those findings are clearly erroneous. *Id.* at 563-564, citing *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000). This Court will affirm the trial court's decision to admit a defendant's confession unless it is left with a definite and firm conviction that a mistake has been made. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

If a defendant makes a statement to police while in custody, the prosecution must prove by a preponderance of the evidence that a defendant's statement was made voluntarily. *Akins*, *supra* at 563. "The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made."

¹ *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

People v Cipriano, 431 Mich 315, 334; 429 NW2d 781 (1988). A trial court should consider a non-exclusive list of factors in determining whether a statement is voluntary:

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.*]

In the present case, defendant contends that he lacked the intelligence to make a knowing and voluntary waiver of his rights. Defendant was diagnosed as being “mildly mentally retarded.” However, the intelligence level of the accused is only one factor to consider in determining whether a statement was voluntary. *Cipriano*, *supra* at 341. Moreover, the evidence revealed that defendant, a middle-aged adult, was able to live on his own and support himself. Defendant was able to operate a telephone, go shopping, write notes on cards, sign his name and apply for various jobs.

Additionally, defendant had previous experience with the police. *Id.* at 334. Hazel Park Police Officer David Niedermeier had interviewed defendant on October 30, 1995, regarding the stabbing of Leonard Benyas. Neidermeier testified that defendant was advised of his *Miranda* rights, that defendant understood his rights and that defendant waived his rights orally and by signing his name on the advice of rights form. The evidence revealed that defendant correctly wrote his “personal information,” including his address, on the advice of rights form prior to signing his name. Although defendant did not make a written statement in 1995, defendant responded to all of Neidermeier’s questions regarding the 1995 stabbing in “full sentences” and in a “conversation” like manner.

Furthermore, the circumstances of defendant’s February 24, 2003, interview reveal that defendant’s statements were made voluntarily. Defendant was arrested shortly before 9:00 p.m. and the interview began at approximately 10:15 p.m. An officer read defendant his rights off of the advice of rights form. Defendant indicated he understood his rights and agreed to waive his rights and talk to the officers. Defendant initialed and signed the advice of rights form after it was read to him. The officers did not promise defendant anything or otherwise threaten him if he did not answer their questions. Moreover, the record reveals that defendant understood the officer’s questions and responded coherently. Defendant did not appear to be under the influence of anything that would tend to change his behavior. When the interview was finished, and defendant had informed the police that he stabbed James Watson, the victim, the officers offered to write down defendant’s statement, read it back to him and allow him to make any changes. When defendant again requested to go home, the officers informed him that he could not. Defendant then requested an attorney and refused to speak. The entire interview lasted approximately one hour.

At the *Walker* hearing, the trial court denied defendant’s motion to suppress and found that, although defendant was of “limited intelligence,” based on defendant’s statements to police,

defendant was lucid and fully understood the circumstances of the interview. The trial court cited different instances in support of its conclusion that defendant was aware of his rights and coherent, including when defendant requested an attorney and when defendant specifically and accurately described the circumstances of the stabbing. Viewing the totality of the circumstances, we conclude that no clear error existed in the trial court's conclusion that defendant's statement was voluntary and that the trial court properly admitted defendant's statement at trial.

II. Prior Acts

Defendant next argues that the trial court erred in admitting prior acts evidence pursuant to MRE 404(b)(1). We disagree.

The trial court's decision to admit evidence under MRE 404(b) is reviewed for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 55; 614 NW2d 888 (2000). An abuse of discretion is found "when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling." *People v Walker*, 265 Mich App 530, 533; 697 NW2d 159 (2005).

Under MRE 404(b)(1), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, other acts evidence may be admissible "'for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material.'" *People v Knapp*, 244 Mich App 361, 378-379; 624 NW2d 227 (2001), quoting MRE 404(b)(1). The Supreme Court noted the factors that must be present for other acts evidence to be admissible:

First, the prosecutor must offer the "prior bad acts" evidence under something other than a character or propensity theory. Second, "the evidence must be relevant under MRE 402, as enforced through MRE 104(b)." Third, the probative value of the evidence must not be substantially outweighed by unfair prejudice under MRE 403. Finally, the trial court, upon request, may provide a limiting instruction under MRE 105. [*People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004), quoting *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).]

"[T]he prosecution bears the initial burden of establishing the relevance of the evidence to prove a fact within one of the exceptions to the general exclusionary rule of MRE 404(b)." *Knox*, *supra* at 509, citing *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998).

In the present case, the prosecutor offered the other acts evidence for a proper purpose. *Knox*, *supra* at 509, quoting *VanderVliet*, *supra* at 74-75. The prosecutor noted that evidence of the October 27, 1995, stabbing was offered to show that defendant possessed the requisite premeditation and motivation to commit the charged offense, first-degree murder. Additionally, the evidence was not offered for the improper purpose of showing defendant's character or propensity to commit first-degree murder but, rather, to show defendant's motive in committing the February 24, 2003, stabbing of James. *Knox*, *supra* at 509, quoting *VanderVliet*, *supra* at 74-75. "A motive is the inducement for doing some act; it gives birth to a purpose." *Sabin (After*

Remand), *supra* at 68 (citation omitted). The circumstances leading up to the October 27, 1995, stabbing were sufficiently similar to the circumstances leading up to the stabbing of James. In each case, defendant had a close relationship with the victim. When defendant was threatened with the loss of the relationship, defendant reacted by stabbing each victim in the back. The record reveals that defendant stabbed Benyas in the back immediately after he told defendant that he did not want to see him anymore. Similarly, the record reveals that on the morning of February 24, 2003, Annette and Kelly told defendant that they were unsure if defendant's relationship with the family could continue. It can be reasonably inferred that the stabbing of James on February 24, 2003, was motivated by the threat of defendant not being able to interact with the Watson family. Accordingly, we conclude that the other acts evidence had the proper purpose of establishing that defendant had the motive and intent to stab James on February 24, 2003.

Second, the other acts evidence was relevant under MRE 402. *Knox, supra* at 509, quoting *VanderVliet, supra* at 74-75. Evidence is relevant if it tends to make a fact of consequence to the action more or less probable than it would be in the absence of such evidence. MRE 401. In the present case, the other acts evidence was relevant because it tended to show how defendant reacted after Benyas threatened to end the relationship. The evidence made more likely the prosecution's theory that defendant had the intent and motive to stab James on February 24, 2003, after Annette threatened to end the relationship defendant had with the Watson family. Thus, we conclude that the other acts evidence was relevant.

Third, the probative value of the other acts evidence is not substantially outweighed by unfair prejudice under MRE 403. *Knox, supra* at 509 quoting *VanderVliet, supra* at 74-75. Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight, or when it would be inequitable to allow use of the evidence. *People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002). As noted above, the other acts evidence has substantial probative value in showing that defendant possessed a similar motive and intent in stabbing James on February 24, 2003. Moreover, the trial court noted at the hearing on the prosecution's motion that the prejudicial effect of Benyas's testimony could be reduced by a limiting instruction given to the jury. Indeed, at trial, the trial court instructed the jury regarding Benyas's testimony, noting that evidence of the October 27, 1995, stabbing could only be used for a proper purpose. Therefore, we conclude that the trial court did not abuse its discretion in admitting evidence of the October 27, 1995, stabbing pursuant to MRE 404(b).

III. Sufficiency of the Evidence

Defendant finally argues that the trial court erred in denying his motion for a directed verdict and the prosecution presented insufficient evidence to prove the elements of first-degree murder beyond a reasonable doubt. We disagree.

In reviewing the sufficiency of the evidence, this Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Similarly, this Court reviews a trial court's decision on a motion for a directed verdict de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecution, could persuade a rational trier

of fact that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

In relevant part, “[t]he elements of first-degree murder are that the defendant killed the victim and that the killing was . . . ‘willful, deliberate, and premeditated.’” *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002), quoting MCL 750.316(1)(a). “‘To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem.’” *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998), quoting *People v Morrin*, 31 Mich App 301, 329-331; 187 NW2d 434 (1971). Although there is no specific time requirement for the act of premeditation, sufficient time must elapse for the defendant to take a “second look.” *Plummer*, *supra* at 300. A non-exclusive list of factors that this Court may consider to establish premeditation include: “(1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted.” *Id.* Further, because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

Defendant conceded at trial and concedes on appeal that he killed James. Further, we note that the evidence presented by the prosecution was overwhelming that defendant killed James. Defendant confessed to the police that he killed James. Additionally, defendant told Jonathon Williams, a fellow cellmate, that he confessed to the police that he killed James. However, defendant argues that the prosecution failed to present sufficient evidence to show that defendant had the requisite premeditation to kill James and that the trial court erred in denying his motion for a directed verdict. We disagree.

First, defendant's premeditation was shown by his previous relationship with James and the Watson family. *Plummer*, *supra* at 300. The prosecution presented evidence that defendant was attracted to Annette and that defendant contemplated hurting James more than six months prior to the killing. Shirley Martin testified that defendant indicated to her that he was “physically attracted” to Annette and that “she [Annette] likes me in that way.” When Martin inquired about James, defendant stated that he had “old-timer's disease.” Martin testified that defendant came into the store on “30 to 50” separate occasions and repeatedly ask her if “a person with old-timer's disease got hurt would they remember how they got hurt?” and “if a person with old-timer's disease got hurt would they know, would they remember who hurt them?” Furthermore, Annette testified to numerous instances leading up to the killing where she rejected defendant's sexual advances toward her. Defendant followed each rejection with anger at the Watson family.

Second, defendant's premeditation was shown by his actions before and after the crime. *Plummer*, *supra* at 300. The evidence revealed that prior to the February 24, 2003, stabbing defendant was becoming increasingly angry and agitated at the possibility of not being part of the Watson family. Annette and Kelly Watson testified to numerous inappropriate messages from defendant where he indicated that he was angry that he was not being treated as part of the family. Moreover, on the morning of the stabbing, Annette told defendant that she would call the police if he did not leave “her children” alone and that Annette was unsure if defendant's relationship with the Watson family could continue. It could reasonably be inferred that on February 24, 2003, defendant was angry at Annette for attempting to end defendant's

relationship with the family and that defendant retaliated by stabbing James. This conclusion is corroborated by (1) the severed picture found on the mantle where defendant was “cut” apart from the rest of the family and (2) defendant’s confession where he stated that he stabbed James because he was mad at Annette and Kelly for blaming him for things he did not do and that the stabbing was his way of “getting back” at them.

Finally, defendant’s premeditation was established by the circumstances of the killing itself. *Plummer, supra* at 300. Defendant indicated in his confession that he spoke with James briefly prior to walking into the kitchen, which was 12 to 15 feet away from the living room, and selecting an eight-inch knife from the butcher block. Defendant, who was wearing gloves at the time, approached James from behind and stabbed him in the back. Based on the medical examiner’s testimony, there was no evidence suggesting that defendant acted in self-defense or that James was aware of defendant’s approach from behind. The fatal wound was a single, seven-inch deep stab wound to the back. Further, Williams testified that when defendant was placed in his cell following the police interview, defendant was “agitated” and repeatedly asked if the police were able to obtain “DNA” evidence from the gloves that defendant was wearing or the knife.

Viewing the foregoing evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence to prove the elements of first-degree premeditated murder beyond a reasonable doubt, and the trial court did not err in denying defendant’s motion for a directed verdict.

Affirmed.

/s/ Michael R. Smolenski
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray